

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1279 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BANK OF BARODA

Versus

CHANDBHAI IBRAHIM

Appearance:

1. Special Civil Application No. 1279 of 1992
MR DARSHAN M PARIKH for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
RULE SERVED for Respondent No. 2
DELETED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/10/2004

ORAL JUDGEMENT

Heard Shri Darshan Parikh for the petitioner.
Though duly served, no one has appeared for the
respondents.

In this petition, the petitioner Bank of Baroda has challenged the order dated 11.11.1991 passed by the competent authority under the Payment of Wages Act, below Exhibit 83, by which the petitioner was prevented from moving, selling or in any other manner disposing of the property of the respondent No.2 company to the extent of Rs. 8 lakhs. The above stay order came to be granted against the petitioner on the basis that the Payment of Wages Authority had found that an amount of Rs. 4,24,123.85 paise is payable to the workmen employed by the respondent No.2. The case of the petitioner is that the respondent No.2 company owes large amounts to the petitioner Bank, for which the Bank was seeking to recover the said amounts through sale of the properties (movable and immovable) of the respondent No.2 company. It was at that stage, the competent authority under the Payment of Wages Act interjected and prevented the petitioner by the above stay order, from selling the property to the extent mentioned above.

While admitting this petition, Division Bench of this Court had stayed the impugned order of the said authority dated 11.11.1991, on the condition that though the Bank may proceed with the sale of the properties of the respondent No.2 company, out of the sale proceeds that may be realised by the Bank, an amount of Rs. 8 lakhs shall be kept apart and be treated as deposit invested with it, initially for a period of 3 months and to be renewed periodically thereafter.

Counsel for the petitioner Shri Darshan Parikh has challenged the impugned order on several grounds, including the ground that the competent authority under the Payment of Gratuity Act had no jurisdiction to issue such a direction against the petitioner Bank, since the petitioner was neither an employer, nor a person responsible for making payment of wages to the workmen concerned within the meaning of the provisions of The Payment of Wages Act. He also submitted that the outstanding dues of the workmen were quantified at Rs. 4,25,123.85 paise and therefore, direction to cover the said dues to the extent of Rs. 8 lakhs was also otherwise illegal. He has submitted that pursuant to the Court's order, the Bank has kept apart the said amount of Rs. 8 lakhs.

As mentioned above, though served the respondents have not been represented. As on date, there is no order passed by any competent Court asking the petitioner to pay the amount of Rs. 4,24,125.85 paise and that therefore, without going into the larger question of

jurisdiction of the competent authority to pass the impugned order, I find no justification in continuing the stay granted against the petitioner Bank. As noted above, by way of an interim order dated 16.4.1992, this Court had stayed the impugned order of the competent authority under the Payment of Wages Act, dated 11.11.1991 and had permitted the Bank to proceed with the sale of the properties of the respondent No.2 company, but had directed that an amount of Rs. 8 lakhs be kept apart and be treated as a deposit. In absence of any direction from a competent Court directing the petitioner to pay the said amount of Rs. 4,24,125.85 paise in favour of the workers, it is not necessary to continue the stay granted against the petitioner Bank any further. However, if in future any competent Court finds that the workmen are entitled to receive the said amount from the petitioner Bank, the petitioner shall have to pay the same along with accumulated interest on the amount of Rs. 4,24,125.85 paise till date, with further stipulation of calculating interest for the future period also, at the rate as may be determined by the competent Court at the relevant time. In view of the above, though the petition is allowed by quashing and setting aside the impugned award dated 11.11.1991 passed by the competent authority under the Payment of Wages Act, the petitioner Bank shall pay to the concerned workmen the above mentioned amount of Rs. 4,24,125.85 along with interest as may be determined by the competent Court as mentioned hereinabove, in case in future competent Court so directs the petitioner to do so. In the result, the petition is allowed as mentioned above. Rule is made absolute with no order as to costs.

Since the impugned order itself is set aside, the petitioner will be free to appropriate the amount kept in the Fixed Deposit.

(Akil Kureshi, J.)

*/Mohandas